IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl.Misc.No.1491-M of 2005

Date of Decision: 26.4.2007

H.K.Hari Proprietor .....Petitioner

Versus

Balbir Singh .....Respondent

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.Deepak Arora, Advocate
for the petitioner.

None for the respondent.

JUDGMENT

The petitioner filed a complaint under Section 138 of the Negotiable Instruments Act in the Court of learned Judicial Magistrate Ist Class, Jalandhar. It was fixed for hearing on 17.9.2004. For want of appearance by the complainant or his counsel, the complaint was ordered to be dismissed in default under Section 256 of the Code of Criminal Procedure. The petitioner/complainant is in revision against that order.

The respondent had been served for appearance before this Court but none appeared on his behalf.

The affidavit-supported averment in the present matter is that the complainant somehow noted that the matter was fixed for hearing for 27.9.2004; whereas it had actually been adjourned to 17.9.2004. The averment-related circumstances are indicative of the fact that the possibility of confusion about the date of hearing could not be ruled out in the

circumstances of the case. In Geeta Kumari and another Versus State of H.P. and others, 2004(3) RCR (Criminal) 952, it was held that the High Court is competent to restore a complaint in exercise of powers under Section 482 of the Code of Criminal Procedure for sufficient cause. In that case also, the dismissal was on account of the wrong noting of the date by the counsel.

In the light of foregoing discussion, the petition shall stand allowed. The order dated 17.9.2004 is quashed. The complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act is ordered to be restored. It shall be entered at its original number.

The petitioner through his counsel is directed to appear before the learned Trial Magistrate on 1.5.2007. On receipt of the file, the learned Magistrate shall first secure the presence of the respondent and, thereafter, proceed with the matter in accordance with law.

(S. D. ANAND)
JUDGE

April 26, 2007
SRM